

*A Souldiers resolution to
braue Souldiers.*

Gentlemen and braue Souldiers, having now ended all that I haue thought expedient to be set downe by writ for the present touching this matter, what amisse and error I haue herein committed, I yeele the same to bee considred and reformed by the wisdom of those, whose experience, authoritie, and good indeavour may bee answerable to the performance thereof: Desiring that the same may bee deemed as proceeding from a Souldier, who more of zeale than of any desire to offend, not to instruct the expert Souldier, but to indeavour my selfe by the observations to make knowne my goodwill and wishes I haue conceaved; to set forward the vnexpert and vnskilled sort, which if I haue obtained, it is the hight of all my desires, and I shall esteeme this a full recompence of my travell, if I perceauie this discourse of the rudiments of Martiall affairs, to bee graciously accepted, though it be roughlie drawne, as it were with the Picke and Musquet of a Souldier, and not trimmed with the delicate pen of an orator, for I haue ever judged it more becomming a Souldier to vtter himselfe by workes than by wordes, and in effect, as I shall doe declare the affection and readinesse I haue

To doe you better service.

I. A.



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ANTI-DUELLO.
THE
ANATOMIE
OF
DVELLS,
WITH THE
SYMPTOMES THEREOF.

**A Treatise wherein is learnedly
handled, whether a Christian Magistrate
may lawfully grant a Duell, for to end a
Difference which consisteth in Fact.**

Also,

**The manner and forme of Combats granted,
with the severall orders observed in the proceeding
thereof, with the list of such Duels, as have bene
performed before the Kings of England.**

**Truly and compendiously collected and set forth
By M^r. IOHN DESPAGNE, for the good of
Soveraigne and Subiect.**

Published by his Majesties Command.

LONDON,
**Printed by Thomas Harper for B. Fisher, Dwelling
in Aldersgate-Street at the Talbot, 1632.**

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TO THE RIGHT
HONORABLE

AND MOST NOBLE,

ROBERT, EARLE OF
CARNARVON, LORD

DORMIR, BARON OF

Wing, &c. M. of the Hawke

to his Maiesty.

As also,

TO THE TRVELY,

Worthy, Vertuous and Learned

Gentlemen, M. Andrew Pit-

carne, Master Falconer to the

King; M. Patrick Maulle,

and Master James Leuiston,

Esquires; Groomes of his Ma-

iesties Bed-Chamber.

A



Right Noble and truely Worthby,



N D E R whose
protections could I
more meritoriously
commit this Dedic-
tion then to you,
whose Noble hearts are so deeply
stamp't with the true marke of vn-
tainted honor, that your faire
Names in the front of this Booke,
will bee to it a strong Buckler, as
well as a singular Ornament; For it
is not the eminency of your great-
nesse; that induceth me to this De-
dication, but your admired good-
nesse, and sweet affability, most
rare, in this Iron age, but still in-
herent

herent and abiding in your Illustrious blood. Vouchsafe then now, out of your noble disposition, and vsuall fauour, to learning and good endeauours, to honor with a kind acceptance this poore oblation; consecrated to your Worth: For such courtesies from you, will make you liue againe and flourish in your graues, Laurell springing from your ashes, while the disdainers of the Muses (which doe abound in this degenerated Age and like Wormes in Libraries, seeme onely to liue to destroy, root out, and banish Learning) will lie witherd, neglected & forgotten; Therefore as the Poet hath,

*Let not our Worthy thinke, it is in vaine,
They by this meanes eternall Names doe gaine,
The Muses doe such Flonour to them gine,
That when they dye, their vertues most doe line:*

*But the enemies of learning, when they die,
As in oblivion shut forgotten lie.*

Were it not for the Muses, our
Names and Liues should at one
time depart; and when faire Ver-
tues worthy louers dye, then doe
their memories suruiue eternally;

*Our gilded Monuments doe soone decaye,
But Fame thus sounded shall endure for aye,
Muses embalme our names with sweet perfume,
Times Odor, which no time can e're consume.*

Accept then (most Noble and
Worthy) of this small scantling of
the Muses seruices, by this Dedi-
cation, as courteously, as officiou-
fly it is humbly Dedicated and
Consecrated vpon the Altar of
your Diuine Vertues.



*A Discourse wherein is discussed
this question, viz. Whether a
Christian Magistrate may
grant a Duell, for deciding of the
matter when the true author of
some fact committed cannot evi-
dently be discovered.*

GENERALL principles
& common notions, by
which a man distinguisheth
what is iust and
what is vniust, are of
themselves so perspi-
cuous, that it is in vaine for any man to
bestow paines in the prooffe of the same;
But, particularities, on which the eie of
Iustice ought to reflect, are oft times ac-
companied with sundry apparances, and
B are

Generall principles are not to be gainsaid, but particularities are subject to argumentation.

are thereby rendred disputable: so, we say in a generall proposition, that *Murder is vnlawfull*, but yet in some particular case, it may from circumstances receiue such a qualification, that it may bee esteemed a lawfull action; Vniuersall maximes are like to Stars, their place certaine and their motions regular and within their generall extention, they comprehend inferior propositions. The Law eternall of God and of Nature, are two great lights which impart lustre and vigor to all the rest, but, when wee come to Hypotheses, then a man descends (as it were) to the elementary region, where all things are changeable and turbulent, and where one shall encounter and meet with a perpetuall conflict of reasons as with so many counterbuffs of contrary winds. One disputes concerning an exild man, a *Banditti*, to whom one promises pardon, in case he bring the head of one of his Comrads, hee brings the head of his owne father, that was one of the number, the question is, whether hee ought to haue the benefir vpon

vpon the faith of the State assured and promised him, or be punished as a Parricide: If a man found asleep be charged to haue committed a murder, there is required a very serious disquisition and waighing of circumstance and reasons before he be eyther condemned or acquitted.

Now, if the question of *Right* (concerning what is iust and what is vniust) be entangled with so many perplexities, that of *Fact* (concerning what is true and what is false) is infinitely more obscure and absconded. It hath been scene, that two men haue so symmetrically resembled each other, that all the kindred of the one, and his very wife also, being mistaken, hath entertained the impostor into a place wherein hee had no interest, and yet when the true husband hath come and presented himselfe, the subtilties of the other were so quaint, and his answers so pat and comformable that they haue made the Iudges to stand astonisht; The eies of all Europe were a long time intent vpon that pretended *Sebastian* of Portugall,

gall, and they that were most cleare sighted were deceiued in him: Oftentimes both *Fact* and *Right*, are liable to disputation, as in the cause of diuorſe between *H.8.* and *Katherine of Arragon.*

*Antient
courses to find
out facts,
which could
not be proued
by an ordina-
ry way.*

If the question bee then of a fact which cannot bee proued by any ordinary way, what shall the Iudges doe to find out the truth? Wee haue not *Moses* resident on the earth, who could consult with God himſelfe, when hee knew not to whom the right of a controuerted ſucceſſion belonged: Nor the *Pectorall* of iudgement vpon the habit of the great Sacrificer: Nor the water of malediction, which diſcouered the innocence or guilt of women ſuſpected of Adultery: Nor the eie of Seers or Prophets, how gaue anſwer themſelues concerning ſmaller matters, as *Saul* ſearching his fathers aſſes, went to *Samuel* to heare ſome tidings of them: Nor that Spirit, by which *Elizeus* diſcouered the auarice of *Gebazi*, and *S. Peter*, the lying of *Ananias* and *Saphira.*

I will not ſpeake at all of thoſe vnlaw-
full

full wayes, which many haue late held to attaine thereunto, no man would bring againe into vse, the prooffe by scalding water, wherein the *Liuanians* put the hand of the accused partie, or the iron red hot, vpon which one of the greatest Princeesse of Europe, offered to march naked, for testification of her chastity; or the profanation of those who abuse the Sacrament of the Eucharist, to know if a man be innocent, and giue it him in this manner: *The body of our Saviour Iesus Christ inable thee to proue:* More tolerable was that course which a Iudge tooke to end a controuersie betwixt three brethren, who were at variance which of them was the more legitimate, hee caused the body of their dead father to be vnburied, gaue them in their hands bowes and arrowes, and adiuged that hee of the three that shot neerest his heart, should bee held legitimate: Two shot, the third said that hee had a great deale rather forgoe his title, then to gaine it at such a price; The succession was ad-

*Unlawfull
waies used
for that pur-
pose.*

iudged to the last, and if the proceeding were barbarous, the iudgement was commendable. But these impious courses, which the Sunne of Iustice hath chased into Hell, ought now thence to bee cald back againe.

Lotts.

Let vs see then, if there rest any other extraordinary way, which may hold the place of prooffe: Wee find that in such cases, some haue vsed casting Lots, and such as approue of a Duell, doe easily allege this reason: That the Duell is one kind of Lot, and by consequent practicable. Indeed thereby occasions wherein the Lot may take place; If two brothers haue an inheritance to be diuided betwixt them, and after each portion being equally diuided, yet they may try by Lot to see which of the two ought to fall to the one or other. In a Senat if a place fall void, and many Citizens expect it, being of equall capacity to execute the same, the claymes of these competitors may be tryed by Lot, for auoidance of many mischiefs: So did the Romans vse to doe in
allo-

allotting their Prouinces, and still to this present, many Common wealths follow that course, in disposing Offices and dignities.

In time of persecution, the Ministers of a Church may cast the Lot, to know to whom amongst them it shall fall to stay, or goe; the examples wherewith holy Antiquity doth furnish vs, to this purpose haue some thing in them of a high straine, then the simple nature of a Lot can well beare; as one may see in the diuision of the Land of Canaan, and in the inauguration of *Saul*, in whose election it pleased God they should deale by Lot. But the matter which is properly in question is this; If a man may this way serue his turne, to find out the truth of a fact which is vnknowne vnto vs; and heere again wee haue examples, but they are such which exceed the nature of a Lot. In antient times amongst Gods people, when it was euident that some crime was committed amongst them, the author whereof was not certainly knowne one cast

cast Lots among the Tribes; from the Tribes, he came to the Families; and lastly it fell vpon some one single man; so was hee conuicted that had taken things forbidden at the sacke of Ierico; so *Iona-*
than was found out, hauing done contrary to the command of the King his father: so the Mariners came to the knowledge that *Ionas* occasioned the tempest; If we were assured to find out matters so happily, or if God had giuen vs his warrant, I could admit of casting lots in this nature, but we haue nomore certainty to build vpon, but the incertainty of the Lot. And yet this makes nothing in fauour of a Duell; for the manner of proceeding by Lot, is not to send two men to slay one another, and generally the Lot toucheth but one, but the Duell endangereth both, one whereof is innocent.

Duell.

We will then now speake of the Duell; and to the end, that no man may imagine that posselt with a preiudicate opinion, we condemne it onely, in regard of the name

name which makes it odious, we wil accurately waigh all the kinds and differences; I well know that wee are not to treat heere of the fights wherein Gladiators & Fencer exercise themselves, for recreation of spectators; Moreouer, we handle not that vnheard fury of those, who to fulfill their particular reuenge, or for some imaginary puntitiō of honour, haue waded so farre in the effusion of blood; and sent so many soules to Hell: But the question heere is of a Duell warranted by the Lawes; agreed vnto by the Soueraigne, adiudged necessary in default of other prooffe, for the making manifest of some fact in question of consequence to the State; and for the decision of a difference of great importance; but this is the very thing which we argue, to wit, if Superiors may in good conscience decree a Duell at their motions, for the determination of their difference.

And that I may anticipate and obuiate many pretenses, which might diuert vs from the state of the question: I acknowledge,

ledge, that vpon certaine occasions the Duell is disputable, and vpon others altogether necessary; See some examples:

When an innocent man oppressed by the calumnious accusation of his aduersary, is like to be condemned, in case he iustifie not himselfe by combat; some hold, it shall bee lawfull to accept this way; there being none other way left him to support his innocence. But, this proceeding cannot iustifie the Iudges; for if they haue found him guilty, will the Duell make him innocent? and finding nought to conuict him, are they not bound to acquit him? Why then will they expose him to the hazard of his life, whom they are not able to pronounce guilty?

The Duell whereto a man is constrained by the violence of one that sets vpon him, is not of this nature. He that is assayled, may repell force, with force; it is a principle in nature and a priuiledge granted by the Laws; for the partie assailed is not in
case

case to inuoke the assistance of a Magistrate, and the Magistrate is not in place to repell that oppression. But, what relation, or analogy hath this defence with the Magistrates absence rendered necessary, and which hee ought to haue forborne, if hee had beene in place with a Duell, which the Magistrate will authorise either by his presence, or by his approbation?

Nor makes it to the purpose to allege the Duels which haue beene fought betweene Princes, which haue determined their quarels by the monemachy of man to man. The Crowne of England was sometimes in that sort disputed, betweene *Edmund Iron-side*, and *Canute* the Dane: *Edward* the third offered as much to the King of France; the French King to the Emperor *Charles* the fifth, and *Henry* the Great, Father of our most Illustrious Queene, made offer to the Duke of *Guise* his competitor, to put a period to their difference by point of speare, his person against his, six against six, or hundred against

gainst hundred. I will not say, that it is lawfull to a Prince so to hazard the head of the Common-wealth, and in his person, all the body of his Estate; but when this way is permitted them, it is, because Soueraigne Princes haue not any Iudge aboue them who can doe them right, so that to obtaine reason from their hands, who are eleuated to as high a pitch of dignity as themselves; there is not any other way, but by armes; and these their doings haue an outward shew of charity: for a Prince will say, that hee likes better to expose his owne person to danger, then to see a bloody warre that should swallow vp many thousands of men, and giue occasion of an infinite slaughter.

And it may bee that some people desirous to auoid a generall conflict of nation against nation, haue sometimes remitted their quarrell to a certaine number of men, to be chosen by either side by them to bee decided by combat. So three hundred Lacedemonians fought against a like number of the Argiens; three
Romans

Romans against three Latins ; and when *David* and *Ishbosheth* , stood competitors for the Royalty ; the two Generals *Joab* and *Abner* , caused a combat betweene twelue Souldiers of the Tribe of *Juda* against twelue of the Tribe of *Beniamin*. This kind of Duell is as it were an abridgement of the warre , and yet not very iustificable.

There is more apparance in this case, then in any of the cases afore mentioned. Two Armies are ready to fight , hee that hath the right on his side, finds himselfe inferior in forces, so that if they come to handy-stroakes we must all die of necessity : The enemy makes an offer of a single fight one to one , and offers to stand to the euent of this Duell ; why should wee all perish , and not rather make legall of this way and expedient, which perchance may giue vs the victory, or at least will saue six thousand mens liues , and there can but one be slaine ?

But this example hath no correspondence with the Duell , whereof wee

now treat, and one may not draw into consequence particular actions which are employted in warre, or in the consequence of warre; especially in heat of battaile, as *H. 7.* slew *Richard*, that enioyed the Royall throne: and *Adolphe de Nassau*, died by the hand of *Albert* of Austria.

Moreouer, it matters not to allege that famous example of *David* against *Goliath*, of a young infant not hauing for defensive Armes other then his Shepherds staffe, and for offensive but a sling and a stone, against an old warrior, monstrous in stature; armed at all points, his speare and lance of a prodigious bignesse, like therest; had not *David* had in this particular an assurance of Gods pleasure, it had beene an extreme rashnesse to enterprise it, and to hope to ouerthrow so great a Colossus. Also that action is numbred amongst the miracles, but miracles are not wrought to serue as rules for our imitation, and we must consider the quality of these two Champions, and the occasion
of

of the Duell: The one was an Israelite, the other a Philistin; they engaged themselves in the quarell of two nations, and not for their particular interest; they were subiects to two severall Princes, and of a contrary Religion, it was in the view of two Armies, and that of the Infidels was to yeeld themselves conquered, if the Giant were slaine: In a word, beside that, it was supernaturall, it was an action of Warre, and consequently lawfull.

Now, to come to the scope of my intent, we must remember that all manner of difference, consists either in *Fact*, or in *Right*. As concerning the question of Right: I no more like that it should be decided by the sword; otherwhiles this bestiall custome hath past as a Law, that the better title of Competitors consisteth in force, so that brothers entered not oft into their Fathers inheritance; but by way of parricide, vpon the dead carcases of their neereft kindred, & with violence to some of their own blood: Sons themselves have
beene

beene vnnaturall to their owne Fathers, and constrained them to seeke succour by Armes. But, let vs see if a Duell may haue place in the question of Fact.

To proue the affirmatiue, these reasons following are alledged ; That the warre is without comparison more vniuersally bloody and pernicious, then is the combat of a few particular men, the death of one or two hath no proportion with the butchering and massacre of many thousand persons ; the slaughter of infants and old folke , the desolation of widowes and orphans, the spoile of tillage, demolishing of houses , ruine of villages , pillages and violence, which cōuert into a wildernesse the most flourishing Kingdomes; and in a word all the mischiefes which warre engendreth , and yet is by naturall Right, That a Duell for prooffe of actions obscure and doubtfull, hath beene adiudged necessary by antiquity, which hath made the Laws, and approued by the suffrages of a great many nations, that the Christian world hath happily put it in practise, for
no

no short space of time : That many differences cannot bee otherwise determined nor many secret injuries come to light, but by this expedient.

I acknowledge that warre is one of the scourges of mankind, and may bee of all others the most horrible: And those which haue authority to make warre, are bound to seeke out all waies for agreement before they enterprise warre, to imploy the mediation of their allyes, and to bring downe their demands to an indifferent equality. But, when one is forced to enter into war all lamentable euents, which accompany war are to be imputed to that party that hath compelled the other to such a necessity; especially, if the warre is defensue, for he that fights onely to defend himselfe, is not guilty of the miseries which may follow. For offensue warre, oftentimes it is not necessary: a Prince or Estate, from whom a duty is detained haue right to regaine by this way. In the first warre that was in the world the Patriarche *Abraham* armed all his house, to

set at liberty his friends and kindred: Warre then is made warrantable by the law of necessity; now this necessity proceeds (as we haue before specified) hence, because Soueraigne powers are exempt from iustifying their actions before any Tribunall.

There is not a Iudge established amongst Kings to decide their differences, so that he which is offended by the other, can haue no recourse but to the iustice of armes. But it is not so amongst private men, for God hath giuen them Iudges, and it not permitted such Iudges, who are no other extirpers of Battell, to grant the same to two parties at variargae, to the end that they may do Iustice by their ownhands.

We must marke also that warre is not made to know which of the parties hath the right; for he that enterpriseth a war, ought first to be well assured of the iustice of his cause; for otherwise it is not a war, but a publique robbery, but in the Duell, two men are made to fight, who it may bee

bee kill one the other, without which one knowes not which had the wrong.

To conclude, war is authorised in Scripture by expresse ordinances, furnished with many rules, blessed by *Moses* prayers, practised by Prophets and Kings; approued by the Fore-runner of Christ; honoured by the presence of the Arke; and gouerned by a Chiefetaine, that calls himselfe the God of Battailles. But after a Duell we finde not so much as the bare name mentioned.

Concerning the Lawes, vpon which some found this Duell, we ought first to know, if such Lawes themselues be lawfull. *A wicked Law*, saith an antient Father, is no Law, but a corruption of Law; and a bastard law cannot legitimate an action, nor make a proceeding iustificable: otherwise, Why curse wee the antient *Almains*, amongst whom, theft hath its approbation, as an exercise of vertue? Why condemne we the *Soyebians*, who imitating the *West Indians*, haue their ser-

*Lawes haue
enacted wicked
things.*

uants buried aliue with them, yea and their owne wiues? VVhy haue we abrogated so many antient Lawes, made by our ancestors, and that haue continued in vse many ages? Is it not for that some of them are contrary to the Law Diuine, others of them repugne the Law of Nature, and fauour more of barbarousnesse, then humanity? The Law which decrees a Duell in default of prooffe, is found amongst the antient constitutions of the *Seliques Allemans, Danes, English, Normans*, and other people of the west; from whom it is said to take its originall. But, what were these Law-makers, that haue made this Law for vs?

VVere they not such themselues, who decreed human Sacrifices to their false Gods, and spared not the offering vp in Sacrifice of their owne Infants? VVere they not such who accounted those vnfortunate men and women, to haue an heroicall resolution that died by their owne hands? VVere they not such which approved incestuous copulations, and that
in

in a word made lawes as it were in de-
spight of God and Nature? But we are
not to wonder if they decreed a Duell, in
the question of Fact, seeing that the grea-
ter part of those nations, do hardly take
any other course in affaires where the
right is controverted, which notwithstanding
is by all found fault with at this day.
Froton King of *Denmarke*, commanded
that all differences arising in his King-
dome, should by combat be decided, and
that is the reason, Why the *Scythians* who
maintaine their right by force, and have
no other Religion, Law, nor Iustice then
the sword; have accustomed to plant their
grounds with trees, wherof they made their
speares, and to adore them as a supreme
Deity. Contrariwise, the *Easterne* people,
whose morall Vertues and Civility wee i-
mitate; The *Assyrians*, *Egyptians*, *Persians*,
Hebrewes, and also the *Greeks* and *Romans*,
never admitted of the Duell, but in fact
of good warre: This Law then ought to
be examined by that which is the rule of
all others, as being deriued from God, for

we speake not of particular ordinances which were in vse onely in the commonwealth of the *Jewes*, but of that eternall Law, expresse in the Sacred Writ, which remaines in perpetuall strength, & binds all kinds of nations, and when there happens a doubtfull cause, if Iudges would preuent those resentments which their consciences will make them feeble, they cannot know a better way then this, to wit, To iudge an other by the same Law, which shall iudge them all at the last day.

The examples of Duels cannot be of better regard then the laws which produced them: *England* hath seen many fight in case of accusations of treason, and it matters not to bring many instances of this nature, whereof Histories are full: *Francis* the first, King of *France*, would neuer condescend that two Noblemen of his Court should fight in single combat, although they greatly desired it, saying, that a Prince ought to suffer a thing whereof can come no good. His successor H. s. (who

(who dyed after by a blow receiued in Tournament) granted a duell, but amongst a thousand of these combats one shall hardly finde two which haue brought to light that which was sought after, to wit, the manifestation of the Fact, the truth thereof being stifled in the blood of the Duellists, so that it is oftentimes an act of Tragedie, rather than of true Iustice.

Before I answer the Objections, which may be alledged, we will encounter this Duell with these arguments following.

1. *Section.* It is certaine and cannot be gainsaid, that this way is casuall, hazardous, and by consequent deceivable; I acknowledge that humane actions, which are various, contingent and infinit, cannot prove themselves with so much certainty, as can Mathematicall conclusions, which haue infalible demonstrations; euer some incertainty goes along with proofes. One and the same action shall oftentimes be disguised in so many several

all shapcs, that the Eie of Iustice cannot
discerne the true figure, the witnesses
may be lyars; Oaths, false; Writings,
counterfait; Iudges, corrupt; and the
parties owne confession, oftentimes be-
traies their owne innocence: It hath been
seene that some weary of an irksome
life, haue voluntary accused themselves of
crimes which they neuer committed; the
Torture hath somtimes caused men to say
that which neuer was; and many also
haue endured it, which haue stood in
maintenance of deeds as false, as falsenesse
it selfe: VVhat then can Iudges doe
alwaies groping in the dark, and when
the brightest lights, which they can
bring, cannot find out the illusions, which
lie hidden in these obscurities? I answer,
that so long as they go a regular pace and
that they containe themselves within the
bounds by good Lawes prescribed, they
cannot erre, when vpon the deposition
of two or three witnesses, not to bee ex-
cepted against; it chanceth that an inno-
cent is condemned: the conscience of the
wit-

witnesses is guilty, not that of the Iudge, for he hath proceeded, according to Laws Diuine and Naturall; but if such a mischief happen through his steering o-ther courses, then such as the Law of God hath commanded him, how can he hope that that Law will serue to warrant his proceeding; And besides, the testimonies and circumstances, which often are suborned, yet haue a naturall relation with the Fact; but things in their owne nature casuall, cannot giue any intelligence herof: VVhat a brutish proceeding then is it to casheer Iustice, which is Sacred; for to entertaine the vanity of a thing contingent casuall and abusiue? Is it not iust as if one should put all to chance, as the *Democritusses* of our age vse to speake?

2. Section. This proceeding is contrary to the fundamentall principles of Iustice, which adiudge the right not to him which hath the stronger body, or which hath more dexterity in his weapon; but to him that is knowne to maintaine a

just cause, yet it is a thing thereby and conformable to the order of Nature, that the strong should overcome the weak, so as it happens the weaker man though innocent, is conquered by the power of his stronger adversary. All the precautions which may bee vsed (as the giuing them armes alike, and the taking away of all aduantages from either partie) cannot so perfectly equalise their forces, their dexterity, their spirit, their courages, but there will euer bee an inequality. And moreouer, a man is not at all times in like strength and during the passage, of such an action a beame of the Sun; the shaking of a leafe, a little sand blowne in the eye, or vnder the feet, a sudden object, a cloud in the aire, a fright, a thought may vndoe one of the parties: but letting passe all this is it not alwayes a course opposite to Iustice, to iudge a man more by the successe of his sword, then by the goodnesse of his cause?

3. Section. And to answer to the objection, that the cause is a doubtfull cause, and

and that the single combat is decreed to dilucidate and manifest the same; let vs see what will be the euent herein: Either the two combatants escape, or both of them stay vpon the place, or onely one of the twaine, if it chance they bee separate vpon equall aduantage, what prooffe will the Duell afford vs? Shall the truth of the Fact bee for euer vnknowne? Then to what purpose serued it to endanger their liues, when some other way of attone-ment might haue beene found out? Had it not beene better to haue taken this knowne course, then to reioyce in their destruction, and engulph them into danger? And if both remaine dead in the field, what prooffe will that make? How shall truth appeare to vs, when their misfortune is equall? Shall we attend till their ghost, from beneath, rise to accord matters after their death? Or if the one terrified ouer his aduersary and hauing his dagger held at his breast confesse himselfe guilty, who can assure vs, that this acknowledgement is wring from him,

more by the force of vertue, then by the feare of death? Or if he that lies groueling on the ground, weltering in his gore, nor hoping ought, nor fearing ought in this world, perseuer in the protestation of his innocence, and dye making such assertion, what shall we iudge in this case? The Iudges giue their suffrage to the conqueror; but I belecue in their consciences they adiuge the right to the vanquished. A dying mans last words are of more validity, then many witnesses; it is not to be presumed that a Christian would staine his life with so criminall a falsity and ad to the ouerthrow of his body, the perdition of his soule also; It remaines that we hold it not strange, though God permit the innocent to bee vanquisht, who though for ought besides hee bee not guilty, hath deserved this chastisement, for defending his innocence by this vblawfull way; but this excuseth not the Promouers or Directors of this action; but more aggravates their fault.

4. Section. For as it is certaine, that of

two contending, the one of necessity must bee innocent; his life is equally endangered with that of the guilty: Equity, and humanity direct vs that it were better to pardon a guilty man, then endanger an innocent, but wee see both are obnoxious to the same danger. As a Turkish Sultan, that cut vp the stomach of thirteene of his Pages, to know which of them had taken and eaten a certaine Melon, and would haue exercised that barbarous cruelty vpon threehūdred more of that band, if in a good heure for them, that fatall fruit had not beene found in the stomach of the fourteenth man.

Some will say, that they condemne them not to dye; But at least it is apparant that they adiudge them to enieopard their liues; which if they escape, that is no thanks to the Law, which bound them to run the hazard; for that bloudy Lawe it selfe ordaineth, that the vanquished, if he dye not by the hand of his Antagonist, bee dispatcht by that of the Executioner. When one enioines a man to fight with

Lyons, or Bulls, vpon condition to acquit him, if miraculously, or by some extraordinary relenting or gentlenesse, hee free himselfe from the pawes of those furious Beasts; is not this neuerthelesse a condemning a man to the danger of death? Or when one experiments the force of a poyson vpon the body of a guilty man, with a promise to grant him his life, in case the strength of his complexion surmount that of the poyson; is not this a kind of condemnation? In the Duell, then two men are exposed to vndergoe this danger; is not this a monstrous iniustice? For ordinarily a man is condemned, because prooffe is brought in against him; but heer quite contrary, a man is condemned; though nothing be prooued against him: one is condemned, I say, to hazard that which no man can restore againe, I meane, his life; If any man obiekt that in war, a Soldier who stands suspect of some fault, is commanded to bee the first that should scale a breach, or to seeke out some dangerous place, or to vndergoe some o-
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ther service full of danger; I answer, if that man be in fault, the ordinance cannot be taxed of iniustice, that assigns him such an expiation; but if he be innocent, yet is there no wrong done him, in so much as the law of armes may command men of more eminent ranke; who are bound to sacrifice their liues for the good of the common weale. And therefore we must againe be mindfull of the difference betwixt a Duell, and those actions; which are atcheiued in the warres. Moreover, a Souldier, or Officer being suspect, or accused of treason; there can no better course be taken to know the truth, then to make a triall, by some service; which may either manifest his perfidiousnesse or loyalty; for such actions disclose the inward intentions of a man, by a naturall dependance, and produce effects of like nature vnto the Fact, which cannot be certainly decided: But in a Duell there is no ior of likelyhood, that any prooffe should appeare thereby amongst such as professe themselves men: for can wee in
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any reason draw this conclusion, that one man is a traytor, because an other hath killed him.

It may be too, some will say, that this Duell is not by command, but onely vpon sufferance, that the two parties themselves request it, and they being agreed, there is no wrong offered them, seeing, it is their owne will and seeking: To which I say onely this, that it is the office of the Magistrate to cohibit and restraine the passions of particular men, and not to comply with their desires of killing one another. In ancient time, in some Common-weales, there was an ordinance made for the disparagement, and disgrace of such that kill themselves by their owne priuate authority; and the purport of the Law, was, that if any one desired death, he should make his repaire to the Magistrate, who hauing heard what he could say; iudged if his request to dye were reasonable, and it being granted so to bee; gaue him leaue either to hang himselfe, or cut his owne throat; otherwise,

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it is a crime to dye without leaue. But the publike Magistrate ought rather to reine in the fury of the enraged, then giue them a passport to slay one another; otherwise, to permit a murder, is to commit it.

5. *Section.* Now, as we know that the intention of each of the two, is to kill his aduersary, in case he deny not his words; if it chance that this fatall Lot fall vpon the innocent; can the Conscience of the Iudges find reasons sufficient for their excuse? Shall not the blood returne vpon their faces, & they neuer be quitted of this aspersiō: And it will not serue their turnes, to say they had no such intention, for they cannot deny to haue exposed the innocent (which soeuer of the two hee were) to a desperate condition, to haue ingaged him in a Combat, and to haue giuen authority to the hand that perpetrated the murder.

6. *Section.* Nay, I say more, that if two criminall persons, duly attainted and conuicted bee condemned to death, the

Magistrate cannot in good Conscience assigne a Duell, that they may slay each other, for that were to make them executors and homicides of themselves; but in a Duell (whereof wee treat) it is farre worse, for heere the innocent shall bee the butcher of the nocent, or (which is more horrid) heere the guilty shall put to death the innocent, or, which fals out there, they are both in perill to bee butchers of each other.

7. *Section.* To say that in a Duell, we await what successe God will send, is a frivolous excuse; ill proceedings haue sometimes good successe, but that is by accident: Wee are not bound to *Pilate* for hauing condemned *Iesus Christ*, hoping that God will pardon our proceedings. And more, who hath told vs that God will adiudge as we desire; to wit, to the aduantage of the innocent? Thinke wee that God is bound to conforme himselfe to our intentions, and to execute our sentence? Or if it be only to see what hee will doe therein, is not this

this impudently to tempt him, and to make an encroachment vpon his hidden iudgements?

8. *Section.* But it is yet more cruell; To what danger are their two soules exposed? If one of the two be flaine in the field, what shall become of that soule, which departs out of this World: also swolne with vengeance, all set on fire with deadly rancour, fretting in his owne gall and thirsting after the bloud of his neighbour? Is it likely to bee receiued into the bosome of the Patriarks? Why then doe wee hazard so swiftly the saluation of a soule, which the Sonne of God bought so dearely, and which cannot bee bought againe; but at the price of so many teares, which he hath shed with great cries, and of so much blood hee hath shed to wash it? Thinke we not that he will demand it at our hands?

9. *Section.* Let vs oppose to this barbarous law, the stipulations of Christian Diuines, who call this Duell, an inuention of him that hath bene a murderer

from the beginning, who when in effect there were but two brethren in the world, instigated the one to kill the other. Let vs oppose against it the Canons & Law of the Church, which haue thundred forth Anathema's, and Excommunications against these bloody homicides; and which haue prosecuted their very ashes, denying them Christian buriall, and condemned their memory as abominable and worthy to be execrated.

10. *Section.* Finally, let vs not oppose the Lawes of God, which haue vouchsafed to descend to actions of lesse consequence. These holy Laws forbid to speake wrong of a deafe man, to lead the blind out of the way, to mouzell the Ox that treadeth out the corne, and many other ordinances of like nature; But how comes it that we find not any rule, in a matter so important as is the Duell? Iudiciall proceedings are there well prescribed at large, and in diuers places; and vpon what proofes Iudges ought to found their iudgements. The same in
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Fact of accusation, and touching Delators. The verball deposition of two or three witnesses, specially in a matter of life and death, *Deut. Chap. 17. vers. 6.* The Oath, which the Holy Ghost affirms to bee an end of Controuerfies, *Hebr. Chap. 6. vers. 16.* And an Oath is ordained in case of goods deposited, *Exodus Chap. 22. vers. 8.* Writings and Seales in matters Ciuill, *Ierem. Chap. 21.* The confession of the guilty, *Iosua Chap. 7. ver. 19.* Presumptuous and strong coniectures; as when *Salomon* adiudged the Infant to her that was more willing that another woman should enioy him all, then to suffer him to bee cut into halfe; But concerning prooffe, or decifion by Battaile, our Sauour hath not aduifed thereof, so that he hath made no rules concerning Barriers; the equality of the Armes, the calling to the Combatants; the going downe of the sun, the silence of the Spectators, and other circumstances. In a word, this fighting reduced into an art is none of his inuention

Also amongst all the Great courages, which the Holy Story commends to vs; and amongst them, which often had many particular quarrels to fight; wee cannot finde the practise of this Duell.

David had an enemy in the Court of *Saul*, to wit, *Doeg* the Edomite, who forbore not to accuse him before his Prince, breaking out defiance, and outrage in his hearing; But *David* did neuer demand the combat to right his innocence, and to make this impostor swallow his lye; for, as concerning what he did against the Giant, wee haue seene, that that action was of another nature; and from this we may conclude, that the Duell is a crime, for whatsoeuer we find vnwarranted by precept or example in the Scripture, is without Faith; now whatsoeuer is done without Faith, is a sin.

11. *Section.* Let vs adde to this, that when the truth of a Fact, cannot be manifested by lawfull meanes it is a tempting of God to bee obstinately bent by fire force, to know that which he would haue hid

hid from vs; but it is a bloody boldnesse, to seeke for the truth in the blood and in the heart of a man, like those wretched soules, that sacrifice humane Creatures to know by their entrals, and shall often get nothing, but resentment & repentance vpon the whole matter, if it chance the fact be manifested afterward, when the mischief is past repaire: as hath beene seene in the famous example of two men, one of which charged the other to haue committed theft; they fought in single combat; the partie accused was slaine; some short time after, the theft was found in the hands of a third partie that was guilty thereof. The Iudges cannot now raise againe the poore innocent, but must suffer the sting of Conscience, all their life long.

12. *Section.* And lastly, let vs see if a Duell be to any purpose, for the determining of a difference; what inconuenience can ensue vpon a difference vndecided? It may be the two parties may bee fighting continually; Is it then fit to make them

them kill one another to day, to the end, they may not doe it at another time? or is it better they should be slaine with ceremony to the end, they may dye by privilege? The remedy is worse then the mischief, and it is worth laughing at, were it not an offence to God. If this way of a Duell bee lawfull betweene two persons, why shall it not be vsed betweene two families vpon like occasion? and euermore the most barbarous neuer liked that Magistrates should permit a Combat between two kindreds or two families, the consequent would extend to the whole cōmonwealth; and lastly, one part of the Estate would destroy the other, which would proue the Forerunner of desolation: In a word, this course would extirpate all Seates of Iustice, and ouerthrow all order and politic.

What then is the duty of Iudges in such like occasions? I say not that they should doe as that Iudge, that being not able to giue his resolution in a Capitall matter; and fearing to doe wrong to the one, or the

the other, would not giue a definitiue Sentence; but decreed onely that the parties should appeare within a hundred yeeres, to abide what should bee iudged to be right: A terme long enough and such as would free them from Court, and processe vnlesse some other Iudge had interposed himselfe in the matter. But to speake seriously, the Iudges cannot bee ignorant what is prescribed vnto them by good Lawes, to wit: *That in euery doubtfull case, the Accused ought to haue the aduantage, and that hee must pronounce in his fauour: That the Accuser not prouing the crime objected; the Partie charged ought to be acquitted.* This rule of Law is equitable and approuable; If hee erre in steering other course, pure Innocence shall reside in more security in the Dens of Lyons, in the Forests, or among the Dragons of the Wildernesse, then in the Palace of Iustice. There is nothing so easy as to accuse, and calumniation with a brazen forehead, an impudent throat, and audacity to persist in leasings, are such things

as

ever ouerwhelme the modesty of the innocent.

Yet neuerthelesse, I acknowledge that when a crime touching the Estate in question, many reasons there may bee, wherefore one ought not euer to bind the Informer to all the stricktneffe which are vsed to accusers that faile to proue their accusations; if a crime of this nature come to my knowledge and I discouer it not, I make my selfe guilty; and if the fact come to light, at any time, by another meanes, my silence will bee enough to hang me. It stands the State vpon, that there bee a moderation vsed in this behalfe: To impose silence at all times, to Delators, that are not able to proue, would produce but bad consequences, for many conspiracies would be plotted, with more audacity and security. In all Estates it is permitted to whomsoever hee bee to discouer crimes, by a secret way: hence it is that an Informer, or Delector of some Crime, write downe in some scroll (without telling his Name) the
Crime,

Crime, the Authors and Confederates, and all circumstances, which are come to his knowledge; hee cast this scroll into a Trunck, which is placed within certain Churches for that end; the Magistrats comming to see the Trunck, find many relations, which serue them to discouer great misteries: Now though this way bee not free from inconueniences, and that there can be no prooffe made thereby (the informer being vnknowne) this good comes thereby, that many hidden practices, which otherwise had not beene brought to light, are by this discovery divulged. The Prince makes his obseruations of things thus discovered, and the discoverer being vnknowne, remains in security; I conclude, that a wise Prince hauing regard to the condition of the parties, to the consequences, and other good respects may conserue vnstayed both the honour of the one, and of the other.

The greatest difficulty, seems to be this, In two contradictories, the one being ne-

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cessarily false, how can one acquit the accused, without making the accuser give himselfe the lye, and by consequent to surcease, but this moderation may be used, to wit, that one content himselfe to say; That he may not goe forward in a fact without prooffe, yet it were fit to enioyne perpetuall silence, and neuer more to complaine vnder a great paine.

Be it as it will, of all expedients, which one can take, the Duell is the worse. This way is practised by men barbarous and vnnaturall; it is casuall and deceitfull: It profanes the Sacrednesse of Iustice: It ouerthrowes vniuersall Maximes: It produceth no certainty: It puts in iopardy the Innocent, as well as the guilty: It tempts God many wayes: It makes men slayers of their neighbours and themselves: It cozens men of saluation, and carries their soules to the Gates of Hell: It is condemned by the wiser part of Christians: It is not warranted by the Law of God: It is without example, from the practise of the faithfull. To conclude,

clude, it is a poysonous antidote, more pernicious then the mischief, which one should preuent. And when it produceth the fruit desired, it is wretched fruit must bee purchassed at such a price. *David* in his sicknesse earnestly desiring to drinke of the Wells of Bethlehem; two Souldiers, would haue hazarded their liues to fetch some, hee protested hee would not drinke the blood of those men. Nothing is so sacred as the blood of a Man, and the blood of Beasts is not employed but in Sacrifices. Let vs not forget the Law expressed in the 21. *Chap. of Deut.* concerning the manslaughter vnkowne, and the expiation thereof in the stony vally. The solemne prayer which was made in that ceremony, may be applied to the subiect of our discourse: *O Lord be mercifull vnto vs, and lay not innocent blood to the charge of thy people.*

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purity to the charge of thy people.

THE MANNER AND
forme of Combats anciently
observed before the Kings
of England.

Vhen vpon the exhibit of the Bill
in Court before the Constable, the
Appellant failes in the prooffe of his
Appeale, and cannot by witnesse
nor any other manner of way make
the right of his demands appeare, he may offer to
make prooffe of his intent vpon the Defendant
with his body by force : And if the Defendant
will say, he will so defend his honour, the Con-
stable, as Vicar generall in Armes (for so is my
Author) vnder the King, hath power to ioyne his
issue by battail, and to assigne the time and place,
so that it be not within forty dayes after the issue
in that manner ioyned, vnlesse the agreement of
the parties giue themselves a shorter day. And
vpon the ioyning of the issue by Combat, the
Constable shall signifie to them their Armes,
which are, a Gauntlet and short Sword, and a long
Sword and Dagger : And then the Appellant and
Defendant

Defendant shall both finde able pledges for their appearance at a certaine time and a day set, before the Sunne be come to some one degree certainly named, to acquit their pledges, and the Plaintiffe to make prooffe of his charge; and the Appealee to make the best defence he can for his honour, and that in the meane time neither of them, by themselves, nor by any well-willers of theirs, shall lie in ambush to assault or worke any grievance to the other.

The King shall finde the field for performance of the Combat, which must bee fixty foot in length, and in breadth forty.

It must bee a hard, and firme ground, nothing stony, and listid about, by the aduice of the Marshall, with good and seruiceable railing. There must bee two doores, the one in the East, and the other in the West; each of them of the height of seven feet or more, so that a horse cannot leap ouer them; and these doores are to bee kept by the Sergeant at Armes.

On the day of the battell the King shall sit in a Chaire mounted on a scaffold, and a low seat shall bee made for the Constable and Marshall at the foot of the descent from the scaffold; and sitting there, they demand the pledges of the Appellant, and Defendant to come into the lists, and render themselves the Kings prisoners, vntill the Appellant and Defendant are come in, and haue made oath.

When the Appellant comes to the field, he shall come to the doore in the East armed, and so appointed

pointed as the Court did order, and shall there attend the comming of the Constable, to bring him in.

And the Constable shall demand of him, who he is that comes thus armed to these lists, what name he beares, and the cause of his comming.

The Appellant shall answer, I am such a man, *A. of B.* Appellant, who am come mounted and armed as you see, to the doore of these lists, to demand an entry, to make an endeavour to proue my intent against *C. of D.* and to acquit my pledges.

Then the Constable, taking vp his Beaver, so assuring himselfe he is the same person who is the Appellant, shall throw open the doore, and bid him enter in his Armes, with his victuals, and other necessary attendance, and his Councell with him, and shall then bring him before the King, and thence to his seat where he shall attend vntill the Defendant come.

Then the Appellant shall make a request to the Constable and Marshall to discharge his pledges; and the Constable and Marshall shall informe his Maiesty, that since the body of the Appellant is entred the lists to make prooffe on his Appellee, his pledges by Law ought to haue a discharge. And after leaue granted by the King, the Constable shall discharge them. If at the time appoynted, the Defendant comes not in to his defence, the King doeth command the Constable to call him by the Marshall; And the Marshall shall command the Lieutenant; and the Lieute-

nant shall command the Marshall of the Heralds of the South ; If it be in the March of *Clarencieux* ; & if the Marshall of the Heralds of the king of the South be not there , then a Herald of the March of King *Clarencieux* shall call him. And if the performance of the Battel be on the North side of the riuer of *Trent* , in the March of king *Norrey*, the Marshall of the king of the North shall demand him : And in his default, one of the Heralds of the March of King *Norrey* shall call for the Defendant, thus :

Oyes, oyes, oyes, C. of D. Defendant, Come to your action which you haue vndertaken this day, to acquit your pledges in the presence of the King, Constable, and Marshall, and defend your selfe against A. of B. in that he shall question and charge thee.

And if he appeare not, he shall be in like manner thrice demanded at the foure corners of the lists ; only the second time hee is proclaimed ; at the end the Herauld shal say, The day is farre passed. So at the third time, the Herauld at the halfe houre after three of the clock in the afternoone, by the commandement of the Constable, shall thus summon him.

C. of D. Defendant, saue your honour, and come in to the action you haue vndertaken at this day; the time is far gone, the halfe houre is spent ; come into the lists vpon the perill that shall follow thereon, or else you come too late.

Then when they haue both appeared, the Register of the Constables Court shall in writing obserue

obserue their entrance, the order, and time, and the manner, whether on foot or mounted, their Armes, the colour of their horses, and how their horses are harnessed, lest their horses, or their harness should bee changed, or otherwise imbezelled.

Then the Constable shall know whether it will please the Kings Maiestie to appoint any of his Nobles to counsell and aduise them.

The Constable shall employ two Knights or Esquires to the Appellant, to keep his standing, and to care that hee obserue no charme, spell, or other ill Arts, vntill he hath made oath; and with the like charge, two others shall be dispatched to the Defendant.

And when the Constable hath asked his Maiesties pleasure, whether his Highnesse will receiue their oathes in person, or that the Constable and Marshall take them in the lists, calling for the Appellant, with his Counsell, he shall demand of the Counsell, if they will make any further protestation, that they should now put them in; for this time is peremptory, so as hereafter no protestation shall be receiued.

Then the Constable shall haue a Clerke ready by him with a booke; and the Constable shall cause his Register to read the whole Bill to the Appellant, and shall say to him,

You *A.* of *B.* doe you know this to bee your Bill, and the complaint which you exhibited in Court before me? Laying your right hand vpon this booke, you must swear the truth of your Bill

in all points, from the first to the last charge in it, and that it is your intent to proue vpon C. of D. the contents thereof to be true, so aid you God.

The forme of it is thus, Thou A. of B. this thy Bill is sooth in all points and articles conteined therein from the beginning to the end; and it is thine intent to proue them this day so to bee, on the aforesaid C. of D. So God thee helpe and hallow.

This done, the Appellant is remanded to his stand.

The Defendant shall be in like manner sworne vpon the truth of his defence.

And this their first oath they ought to take kneeling; but by the fauour of the Constable and Marshall they sometimes do it standing.

Then the Constable shall by the Marshall, call the Appellant before him, and tender him his second oath, which (if the Constable giue leaue) he may take sitting.

A. of B. laying your hand on the book this second time, you shal sweare that you come no otherwise appointed then as by vs the Constable & Marshall hath beene assigned; that is, with a short Sword, and a Gauntlet; a long Sword, and a Dagger; that you haue not any knife, or any other pointed instrument or engine, small or great; no stone, no herbe of vertue; no charme, experiment, or any other inchantment, by whose power you beleeue you may the easier ouercome your aduersary, who within these lists shall oppose you in his defence; and that you trust not in any thing more then

then in God, your body, and the merits of your quarrell; So God you help.

Then being conducted to his place, the keepers of the lists shall bee put out, and the Defendant in the same manner shall be demeaned,

Then the Constable and Marshall shall send for them both before them, and the Constable shall name the Appellant and Defendant, and shall say to them both thus;

Take yee each other by the right hand, and I command that neither of you bee so hardy as violently to handle one another, vpon your perill; and laying their left hands on the booke, the Constable shall say,

I charge you *A. of B.* Appellant, by your faith, and your right hand, which is inclosed in the hand of your aduersary *C. of D.* that you vse your power, and make vse of all aduantages to make good your appeale vpon *C. of D.* your enemy, the Defendant, to force him to a rendring of himselfe into your hands by demanding of a parley, or with your owne hand to kill him before you depart out of these lists, by that height of the Sunne, and age of the day you haue assigned you by vs the Constable and Marshall, by your faith; And so God you help.

The same forme shall bee obserued on the part of the Defendant; and then they shall be brought each of them to their places, the lists cleared of the Councill and seruants on both sides.

The oathes thus past, an Herauld by the command of the Constable and Marshall, shall make

Oyes thirce, and shall say,

We the Constable and Marshall in the Kings name charge and command euey man of what quality or condition soeuer he bee, that hee approach not within foure foot to these lists, nor that hee speake any word, make any noise, giue any signe, nor by his countenance or otherwise direct either of these parties, *A. of B. or C. of D.* Appellant and Defendant, to take any aduantage the one vpon the other, by any signe so giuen, vpon paine of life and member, and the forfeiture of his chattels.

Next, the Constable and Marshall shall assigne the place where the king at Armes and the Heraulds standing may haue a full sight of the action within the lists : for now they are to attend the Appellant and Defendant, and minister to them in what they shall command them ; and if either of them faint, or haue either desire to eat or to drinke of their victuals they bring with them into the lists, it is the office of the Heraulds to bee attending vpon them. If the Appellant will either eat or drink, hee must first desire the good leaue of the Defendant, which shall be by a king at armes signified to the Constable and Marshall, and they to attend his Maiesty with the desire of the Appellant, and the consent of the Defendant, and pray his Maiesties allowance of it. And if either the Appellant, or the Defendant haue a necessity to doe any other thing, the Heraulds and the Pursuivants shall attend them.

After this the Constable and Marshall freeing
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the lists from people of all conditions, except a Knight and two Esquires of the Constables train, and the Lieutenant ; a Knight and two Esquires of the Marshals retinue, which shall bee in Armour, bearing Lances in their hands, which are not to bee barbed with any iron, to part them when his Maiesty shall giue the word.

These Knights and Esquires are neither to bring swords, kniues, bowes, nor daggs into the lists.

They of the Constables side are to keepe one corner of the lists, and there lay themselves flat on the ground : and in like manner shall they of the Marshals side bestow themselves at another corner of the lists ; for none may appeare vpright within the lists saue the Constable and Marshall.

And if the King be not present, then the Constable and Marshall shall sit in the place of the King, and the Lieutenant be within the lists.

But if the King bee present, then the Constable sitting vpon a seat before the King within the lists, as the Kings Vicar generall, shall command his Lieutenant to accompany the Appellant, and the Marshall or his Lieutenant with the like respect shall accompany the Defendant.

And the Constable sitting at the foot of the seat Royall, shall speake with a lowd voyce ; Let them go, let them go to doe their endeauours.

This said, the Appellant going to the Defendant (standing in the presence of the King) shall with all his strength assault him ; and the Defendant shall be as wary as he can in his defence.

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The Constable and Marshall, or their Lieutenants, ought to be within hearing, and also within sight, if in case either of them speake, or make any signe he will renounce his quarrell; or if the Kings Maiesty say but Hoc, or giue any other signall, then they who are within the lists with the Constable and Marshall, throwing their Lances betwixt the Appellant and the Defendant, and so parting them, they shall not giue way to either of them to assault the other, vntill the King command they bee free, or that the Constable declare his Maiesties pleasure to bee so, by saying, Let them go, the King wils it.

Notwithstanding that the Constable hath giuen the Defendant a set time to come in to his performance, yet, in case he cometh not according to the appointment of the Constable, of right, iudgement shall not passe against him vpon his default, vntill the first halfe houre after three of the clock be cleerly passed, let the cause be treasonable or otherwise.

But the Appellant whose suite it is, ought to be there at his precise time, when the Constable shall first demand him, else his pledges haue forfeited their security.

The Appellant and Defendant shall be seatched by the Constable and Marshall, their weapons and armes questioned in all points, that they bee auowable, and no engine or deuice not honourably iustificable in them. And if they finde any such practice, the party shall bee outed of that weapon: for, reason, ciuility, and the law of Armes

Armes will vpon no condition, in acts of this high performance, admit of trechery, or base conspiracy.

The Appellant and Defendante shall, as they themselves agree, cloath their bodies; for that is left to themselves, only the Constable shall examine that they both haue the same Armour, or other defence vpon his body.

If one of them desire his sword to be shortned, so that it bee shorter then the measure of the standard, the other is not bound to abate the length of his weapon: But if they once agree to fight with swords longer then the standard allowes, at the day of the action within the lists, either of them may demand to haue his weapon made to answer the standard, and the other is in honour bound to make his conformable, being a demand lawfull, not vpon fancy, and tasting of no private way or aduantage.

Now the Constable and Marshall are to be attentive to the King, if his Maiesty shall please to command the Combatants should bee parted to take breath, or for any other purpose; and in any case they must haue especiall care how they part and divide them; and that at the time when they interpose, they bee both of them in the same degree or possibility, and neither of them in the mercy nor in the hand of the other.

The Constable and Marshall shall not suffer them to whisper, or haue any private discourse; for they are the witnesses, and in their breasts lies the record of their words, and in no other place.

And if the battell bee grounded on a caute of treason, hee that is convicted and discomfired, shall be disarmed by the command of the Constable and Marshall, one corner of the lists broken downe in disgrace of the party becoming recreant, and being fastned to a horse, shall bee dragg'd from the place where he so lost his Armes to the block, and have his head seuered from his body, or be hanged by the neck, or otherwise, according to the severall vsages of the Country.

It is the office of the Marshall to accompany the party to the place, and there in his view to see execution done, and all the sentence performed, and that as well of the side of the Appellant as the Defendant. For good conscience, equity, and the law of the field do exact, that the Appellant if in case he be convicted, and becommeth a man vanquished in his prooffe, that hee incurre the same paine and hazard the Defendant should have done.

But if the cause be any other crime then treason, hee that is so by the body of his aduersary convicted, shall lose his Armes within the lists, and thence be led out to the place of his suffering, which is directed by the vsage of the Country; and this as well of the Appellant as the Defendant, as aforesaid; onely hee shall not bee dragged, nor the railes broken, vnlesse it bee in case of treason, and not otherwise.

But if it be merely an act of Armes, a cryall by challenge allowed by the grace of the King, Constable, and Marshall, he that in such a Combat

bat confelleth himfelfe vanquifhed, fhall be difarmed, degraded, and being led to the skirt of the lift, he fhall be rofled and throwne over the barrs, without any further punifhment.

If it please the King to take the difference, and the iudgement thereof into his owne hand; and command them to bee friends without any further controuersie: Then the Conftable taking the Appellant, and the Marshall the Defendant, fhall bear the both before the King: And the King fhall by the Conftable fignifie his pleasure vnto them. Then they fhall be both of them lead together vnto one of the gates of the lifts, and be fo conueied out of the lifts, in all points as they entered the lifts; and fhall be fo conueied out of the lifts, in the fame Article of time, that of them no man may fay, A firft was out, or A laft within the lifts: For, fince the King hath into his own hands taken the confideration of the quarrell; it were difhonorable that either of the fides, in a Battaille withdrawne by the word of a King, fhould fuffer any difhonor, the one more then the other. And the antient tenet and opinion hath been, that he that is firft out of the Lifts fuffers a diminution of honor, the field being his in honor, that is laft poffeffor of it; For, he maketh it good.

There ought to be double lifts for the feruants of the Conftable and Marshall, and for the Sergeant at Armes of the King, who are to attend, and defend, that no offence, affray, outrage, or other mifdeameanor againft the Cryes, made only in Court, be committed or fuffered, or any affront

And if the battell bee grounded on a cause of treason, hee that is convicted and discomfired, shall be disarmed by the command of the Constable and Marshall, one corner of the lists broken downe in disgrace of the party becoming recreant, and being fastned to a horse, shall bee dragg'd from the place where he so lost his Armes to the block, and have his head severed from his body, or be hanged by the neck, or otherwise, according to the severall usages of the Country.

It is the office of the Marshall to accompany the party to the place, and there in his view to see execution done, and all the sentence performed, and that as well of the side of the Appellant as the Defendant. For good conscience, equity, and the law of the field do exact, that the Appellant if in case he be convicted, and becommeth a man vanquished in his prooffe, that hee incurre the same paine and hazard the Defendant should have done.

But if the cause be any other crime then treason, hee that is so by the body of his aduersary convicted, shall lose his Armes within the lists, and thence be led out to the place of his suffering, which is directed by the usage of the Country; and this as well of the Appellant as the Defendant, as aforesaid; onely hee shall not bee dragged, nor the railes broken, vnlesse it bee in case of treason, and not otherwise.

But if it be meereley an act of Armes, or tryall by challenge allowed by the grace of the King, Constable, and Marshall, he that in such a Combat

bat confesseth himselfe vanquished, shall be disarmed, degraded, and being led to the skirt of the list, he shall be tossed and throwne over the bars, without any further punishment.

If it please the King to take the difference, and the iudgement thereof into his owne hand; and command them to bee friends without any further controuersie: Then the Constable taking the Appellant, and the Marshall the Defendant, shall bear the both before the King: And the King shall by the Constable signifie his pleasure vnto them; Then they shall be both of them lead together vnto one of the gates of the lists, and be so conueied out of the lists, in all points as they entered the lists; and shall be so conueied out of the lists, in the same Article of time, that of them no man may say, A first was out, or A last within the lists: For, since the King hath into his own hands taken the consideration of the quarrell; it were dishonorable that either of the sides, in a Battaille withdrawne by the word of a King, should suffer any dishonor, the one more then the other. And the antient tenet and opinion hath been, that he that is first out of the Lists suffers a diminution of honor, the field being his in honor, that is last possessor of it; For, he maketh it good.

There ought to be double lists for the seruants of the Constable and Marshall, and for the Sergeant at Armes of the King, who are to attend, and defend, that no offence, affray, outrage, or other misdeameanor against the Cryes, made only in Court, be committed or suffered, or any affront

that may be meant against the Kings Maieſty, or the Laws and honor of Armes. Theſe men ought to be in compleat Armes.

The Conſtable and Marshall, may bring what power they pleaſe with them into the field, and thoſe either Armed, or otherwiſe, at their Election.

The Kings Sergeants at Armes ſhall bee the keepers of the Doores, and Portals of the Liſts; and they are to make all Arreſts by the Commandment of the Conſtable and Marshall; and ſuch ſo arreſted to aſſure.

The fee of the Conſtable is their ſpeeds, and Armes, and all that they bring with them into the liſts, ſave onely thoſe wherewith they fight; And of the partie overcome, all his Armes and other things of Combat, are the right of the Conſtable.

The fee of the Marshall, is onely the Liſts, Barres, Seates, and other works for that ſpectacle.



A CATALOGVE
OF
CERTAINE COMBATS,
GRANTED BY THE KINGS
OF ENGLAND.



Demond of the Race of
West Saxons, fought in
Combat with *Cannus* King
of *Denmarke*, for the pos-
session of the Crowne of
England. In which fight,
both the Princes being
weary, by consent parted
the Land betwixt them. *Anno 1016.*

Robert Mountfort accused *Henry of Essex*
of Treason, affirming, that hee in a Iourney
toward *Wlaes*, neere vnto *Colshill*, threw away
the Kings Standerd, saying the King was dead,
and turned backe those that went to the Kings
succour. *Henry* denyed the accusation, so as
the matter was to bee tryed by Combat:
The place appointed for fight, was a little Ile
neere

neere vnto *Reading*. In this Combat, *Henry* was vanquished, and fell downe dead, and at the suite of friends, licence was obtained that his body might bee buried by the Monkes of *Reading*. But it happened that the said *Henry* recovered, and became a Monke in that Abbey. *Anno 1163.* In the raigne of King *Henry* the second.

Henry Duke of *Hereford*, accused *Thomas Mowbray* Duke of *Norfolke*, of certaine words by him spoken, as they rode betweene *London* and *Brainsford*, tending vnto the Kings dishonor. *Thomas* Duke of *Norfolke* denied to haue spoken any such word, but *Henry* affirming his accusation, the King granted the Combat, to bee performed at *Couentry* the seuenth of *September*, 1398. *Anno Rich. 2.* but the Combat was not performed, for the one, and the other party was banished the Realme.

A combat was fought at *Westminster* in the Kings presence, betweene *John Ansley* Knight, and *Thomas Catrington* Esquire, whom the said Knight had accused of Treason for selling the Castle of *Saint Sauour*, which the Lord *Chandos* had builded in the Isle of *Constantine* in *France*; In which Combat the Knight was victorious. *Anno 1374. Rich. 2.*

A Combat was granted vnto an Esquier borne in *Navarre*, to fight with an *English* Esquire called *John Welsh*, whom the *Navarrois* accused of Treason. But the true cause of the *Navarrois*, his malice was, that the said *Welsh* had dishonoured his wife as (being vanquished) he confessed. The
King

King gaue sentence hee should be drawne, and hanged. *Anno 1344. Rich. 2.*

A Combat was fought betweene Sir *Richard Woodvile*, and one other Knight borne in *Spaine*. After the third blow giuen, the King stayed the fight. *Anno 1441. Henric. 6.*

A Combat was granted vnto *Iohn Viscount* borne in *Cipres*, and *Thomas de la Marsh* Natural sonne vnto *Philip King of France*, in the Raigne of King *Edward* the third at *Westminster*.

There was also another Combat, granted by the said King *Edward*, which was fought neere *Barwick*, betwixt Sir *Iohn de Sisfild*, and Sir *Iohn de Faukenham*, concerning those Armes borne now by the honorable Familie of the *Cecils*; The Coate was challenged by *Sisfild*, but worne by *Faukenham*; They began the fight, but it was soone determind by the King.

FINIS.